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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,194	10/30/2001	Robert D. Sheldon	021556.0137	9458

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EXAMINER

KOSTAK, VICTOR R

ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 09/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/021,194

Applicant(s)

SHELDON ET AL.

Examiner

Victor R. Kostak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 7, 8, 10, 12, 14, 15, 19-23 and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Manor

The system of Manor (noting particularly Figs. 1-5) involves encoding and decoding of various electronic appliances through a common communication channel 110. Communication can include any of plural networks 140, 150, 160 and 170. Also included are diagnostic capabilities (noting element 480 in Fig. 4 or 5, for example) at respective nodes 130, 131, 132, etc., that monitors various signal parameters of the devices, such devices including a television 135, wherein access device 120 serves as a physical network interface operable to receive A/V data associated with the device (in compressed form, noting MPEG codec 575). A diagnostic engine 480 interfaces with a diagnostic tool (codec 575, for example) by way of bus 490 (Fig. 5), operable to determine performance statistics by analyzing the A/V data accessed by the diagnostic tool (such as element 575), thereby meeting claims 1, 14 and 21.

As for claim 22, the diagnostic nodes can be controlled from a server end (paragraphs [0029] and [0045]).

As for claims 10, 12, 15, 23 and 25, Internet station 150 serves as a communication agent that communicates the performance data through the network.

Regarding claims 2-5, 19 and 20, jitter, latency, throughput and packet loss are all monitored by the diagnostic stage (paragraph [0087]).

As for claim 7 and 8, Manor provides a video and an audio codec (paragraph [0057]).

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manor.

Regarding claims 6 and 18, Manor points out that he monitors plural parameters and gives several examples but not an exhaustive list (noting paragraph [0087] again). In view of this open-ended allowance, it would have been obvious to one of ordinary skill in the art to monitor all parameters involved in A/V communication which may be subject to negative effects. Furthermore, since audio and video components are typically associated with each other for program reproduction, and since Manor accounts for synchronization problems such as latency and jitter, it would therefore have been obvious to monitor mutual synchronization between the audio and video components (i.e. lip synching) and accordingly provide countermeasures therefor.

As for claim 17, Manor specifies that one of the serving stations can be the Internet and "*any other network*" (paragraph [0029]). The examiner takes Official notice that the Web is a very well known and used network source (implicitly associated with the Internet) and would

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have been obvious to use as an allowance by Manor, for the purpose of accommodating as an extensive data source which thereby provides services to an extensive body of users.

3. Claims 11, 16 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manor in view of Ganz et al.

Ganz also provides communication and diagnostic capabilities of various signal parameters (e.g. col. 2 lines 34-36), and incorporates an SNMP unit 214, 240. It would have been obvious to one of ordinary skill in the art to use any suitable diagnostic monitoring device, such as an SNMP as shown by Ganz, as a diagnostic unit in Manor, who by not specifying his exact type (element 480), gives an implicit suggestion that any suitable device can be used.

4. Claims 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manor in view of Wei et al.

As noted above, Manor points out that he monitors plural parameters and gives several examples but not an exhaustive list. In view of this open-ended allowance, and since packetized data is communicated, it would have been obvious to one of ordinary skill in the art to use a packet sniffer, as used by Wei in his diagnostic system (col. 6 lines 56-58; col. 8 lines 43-46) to identify packet data for monitoring.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor R. Kostak whose telephone number is 703 305-4374. The examiner can normally be reached on Monday - Friday from 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 703 305-4795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Or faxed to:

(703) 872-9306 (for Technology Center 2600 only)

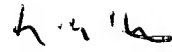
Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 308-HELP.

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Victor R. Kostak
Primary Examiner
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VRK